

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15444 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BHARATBHAI MODIRAM KHINCHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15444 of 2003
M/S THAKKAR ASSOC. for Petitioner No. 1
MR SS PATEL, ASST. GOVERNMENT PLEADER for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 04/12/2003

ORAL JUDGEMENT

1. The petitioner is detained by virtue of order passed by District Magistrate, Surat on 23rd July 2003 in exercise of powers under sub-section 2 (a) of Section 3 of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as the PBM Act, for short]. In the grounds

of detention, the detaining authority found that the detenu was indulging in activities which were detrimental to the smooth supply of essential commodity, viz. Kerosene. It is alleged that he was illegally purchasing Blue Kerosene [control Kerosene] from the drivers of tankers and after a chemical process, was converting the Blue Kerosene into White Kerosene and was selling in retail to consumers as well as three-wheeler operators. The detaining authority inspected the premises of the detenu on 25th February 2003 and collected samples and other material. The detaining authority, after considering relevant aspects including the possibility of resorting to less drastic remedy, came to the conclusion that the order of detention under PBM Act was the only effective remedy that can be resorted to, as resorting to prosecution may cause delay and the detenu may continue his activities after obtaining bail. The detaining authority, therefore, exercised powers and passed the order of detention.

2. The detention is challenged on various grounds.

However, learned advocate Mr. Pahwa appearing for the detenu has pressed into service only the ground of delay in passing the detention order. He submitted that the premises were inspected on 25th February 2003. During the course of the inspection, statement of the detenu is allegedly taken wherein he has allegedly admitted his involvement in the activities considered by the authorities while passing the order of detention. Despite this, the detention order is passed on 23rd July 2003. The need recorded by the authority for urgent action and for not resorting to the less drastic remedy of prosecution on the ground of delay, therefore, cannot be considered as genuine and this delayed action would frustrate the very object of detention. He has placed reliance on the decision of this Court in the case of Bhagubhai Haribhai Chauhan in Special Civil Application No. 10468 of 2002 decided on 23rd January 2003 [Coram: P.B. Majumdar, J.] and submitted that the detention may be quashed and set aside by allowing this petition.

3. Mr. S.S. Patel, learned Assistant Government Pleader has opposed this petition. He submitted that the statement made by the detenu admitting the involvement was on record, but the authorities wanted to be sure that the material seized is control Kerosene, and, therefore, the authority waited till receipt of the report from Forensic Science Laboratory before passing the order. The delay, therefore, is not attributable to any negligence on the part of the detaining authority, and, therefore, the petition may be dismissed.

4. Having regard to rival side contentions, there is no dispute about the fact that the premises of the detenu were inspected on 25th February 2003 whereas the order came to be passed on 23rd July 2003, i.e. after almost 5 months. This delay is sought to be explained by the detaining authority in the affidavit-in-reply by stating that the Kerosene collected at the time of inspection was sent for chemical analysis to the Forensic Science Laboratory. The report was received a few days prior to passing of the order, and soon thereafter the order was passed.

5. In case of Bhagubhai Haribhai Chauhan [supra] relied upon by Mr. Pahwa, this Court has made an observation that when there was an admission of guilt by the detenu, the authority, if it had felt to detain the person, ought to have passed order immediately and the delay in passing the order would frustrate the object of detention. In the instant case also, even as per the case of the respondent, there is a statement of the detenu admitting his involvement in the activities alleged. If the authority felt an urgent need for detention in order to prevent the petitioner from pursuing his activities, this could have been very well used against the detenu. In the face of this statement, no action is taken till 23rd July 2003. Differently put, for 5 months, the petitioner-detenu was free to indulge in such activities. If this is so, the very purpose of preventive detention would be frustrated, and as observed in the case of Bhagubhai Haribhai Chauhan [supra] such order is required to be quashed and set aside. The delay in passing the order, therefore, would affect the genuineness of the satisfaction recorded by the authority for immediate detention of the detenu. The order, therefore, cannot be permitted to stand. The petition deserves to be allowed, and the same is allowed. The impugned order of detention passed by the District Magistrate, Surat is quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No order as to costs.

[A.L. DAVE, J.]
mathew